FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR

WRIT PETITION NO: 3615/2007
{ Harishchandra Laxmanbapu Hatnagar and others vs. Shivcharan Laxmanbapu Hatnagar)

Office Notes, Office Memorandum of Coram appearances, Court's orders of directions and Registrar's orders.

Court's or Judges Order

.....

Mr. S.V.Purohit, Adv. for petitioners

CORAM: A.H.JOSHI, J.
DATED: 23rd November, 2007.

***

1. The judgment passed by the lower Appellate Court is challenged mainly on following grounds :-

(i) that any illegality in relation to the construction cannot be challenged before Civil Court and ought to have been made a matter of grievance under the Development Control Regulations before the Planning Authority;

(ii) that on facts, the plaintiff has failed to prove encroachment;

(iii) that the plaintiff has not prayed for delivery

of possession of alleged encroached portion and, therefore, suit for injunction would not be maintainable.

2. Heard Mr. S.V.Purohit, learned Advocate for petitioner. Perused the Petition and annexures thereto and judgment cited at Bar, i.e. 1967 Mh.L.J. 946 in the case of Narayndas Kanuga vs. Sarasvatibai Joshi.

3. This Court finds that there is nothing in law to bar a suit. Section 9 of Civil Procedure Code encompasses suits of all nature in absence of express bar. No such bar is shown.

4. The reported judgment cited supra does not lay any rule of 'precedent' on this point.

5. In so far as other two aspects are concerned, the plaint consists of prayers which are adequate enough to grant the relief of injunction. The findings recorded by the first Appellate Court that plaintiff has made out a strong *prima facie* case, and also found that the Municipal authorities have already asked

the defendant to stop the construction, is not shown to be erroneous, or to be by way of conclusions which are impermissible from the material on record.

6. In these premises, petitioners have failed to make out any case for interference in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India. Petition is, therefore, dismissed.

JUDGE

sahare